

QFIs allowed to invest in directly in Indian Listed Companies

Securities Exchange Board of India (SEBI) and Reserve Bank of India (RBI) vide Circular No. CIR/IMD/FII&C/3/2012 and Circular A. P. (DIR Series) No. 66 dated 13th January, 2012 respectively have allowed **Qualified Foreign Investors** (QFIs) to invest directly in the equity share capital of the listed companies in addition to investment in equity and debt schemes of Mutual Funds by opening a demat account with SEBI registered Qualified Depository Participant.

To recapitulate, in the circular dated 9th August, 2011 SEBI has provided that QFI means non-resident investors, other than SEBI registered Foreign Institutional Investors (FIIs) or Sub Account, are Financial Action Task Force (FATF) compliant and with which SEBI has signed Memorandum of Understanding (MOU) under the International Organization of Securities Commission's (IOSCO) framework. As a result, companies incorporated outside India can now invest in listed Indian Companies without getting themselves registered as FII/ Sub Account.

Though both the circulars contain similar provisions regarding investment by QFIs in the equity shares of Indian Companies, there is little ambiguity as to the definition of QFI. While the definition in the Circular of the SEBI excludes FII and Sub Account, the definition in the RBI Circular excludes FII and Foreign Venture Capital Investors (FVCI).

Some important provisions of the current Circulars are discussed hereunder:

Firstly as per SEBI Circular, to trade in Equity Shares, QFIs are required to have demat accounts with SEBI registered **Qualified Depository Participant**(QDP). To be registered as QDP, a DP should have paid up capital of at least Rs. 50 crore, appropriate arrangements with a designated AD Category - I Bank, systems under Prevention of Money Laundering Act and shall only act as QDP with prior approval of SEBI.

Eligible Transactions by QFIs

The Circular provides for the following capital market transactions to be carried out by QFIs:

- Purchasing and selling of Equity shares on stock exchanges through SEBI registered stock brokers and making purchases in IPOs, FPOs and Right Issues;
- Receiving shares through Bonus, Split, Consolidation, Mergers, De-mergers and other corporate actions.
- Tendering shares in offers under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 or SEBI (Delisting of equity shares) Regulations, 2009 and to tender for buy-backs in accordance to SEBI (Buyback of Securities) Regulations, 1998.
- QFIs are further entitled to receive dividends on shares held by them like other shareholders.

Account Opening and manner of operations

SEBI has prescribed the requirements and procedure for account opening by QFI along with manner of operations thereof. The key provisions are as below:

- QFIs are allowed to open only one demat account with only one DP, though they can open trading accounts and trade with one or more SEBI registered stock brokers. A QFI is not allowed to open any bank account in India.
- Further, the responsibility is placed upon the DP to ensure that same set of ultimate/ end beneficial owner(s) do not open more than one demat account as QFI and that end beneficial owner of the QFI is not resident in India. DPs shall also obtain all necessary documents of QFI for obtaining the PAN as well as for proper KYC and ensure necessary deduction of taxes.

- QFIs are required to inform any direct/ indirect change in structure or beneficial ownership to DP and to make reporting as may be required.
- DPs are required to open a separate single rupee pool bank account with designated AD Category-1 Bank and to ensure that funds of each and every QFI are clearly segregated from each other at all times. DPs are further required to ensure compliance of provisions of PML Act, rules and regulation.
- DP shall ensure that every QFI transacts only through one designated overseas bank account and shall also ensure that all inward bound investments are received from that account and repatriation/ remittances of proceeds are also transferred to the same account.
- Further responsibilities are placed upon DPs to maintain investor related records of QFI and is further required to ensure shares held by QFIs to be free from all encumbrances at all times and to notify any penalty, litigation or proceeding etc. by overseas regulator against DP or QFIs to SEBI, Depositories and Stock Exchanges
- For any change in account from one DP to another, the QFI is required to close the earlier account and to furnish all necessary details to the new DP.

Investment Restrictions & Monitoring of Investments for QFIs

- QFIs shall transact only on delivery based transactions and each transaction shall be cleared & settled on gross basis and they are not allowed to issue any offshore derivatives instruments/ participatory Notes.
- DP on a daily basis is required to provide buy and sell information or any other related information to their respective depositories. Further, stock exchanges shall provide details of paid up capital of all listed companies to the depositories in every six months and information of change in paid up capital of a listed company immediately.
- **The individual and aggregate investment limits for the QFIs shall be 5% and 10% respectively of the paid up capital of an Indian company. The pricing of all eligible transactions and investment in all eligible instruments by QFIs under this scheme shall be in accordance with the relevant and applicable SEBI guidelines only.** Further it is upon Depositories to ensure that QFI investments do not exceed the prescribed limits.
- Depositories to jointly on a daily basis, publish / disseminate aggregate shareholding of QFIs to public and to the RBI and in case shareholding of all the QFIs in a company reaches 8% of its equity paid up capital, the QFI shall be placed under caution list and no further purchase would be allowed without prior approval of Depositories.
- In case QFI wish to buy equity shares of the companies in the caution list without obtaining prior approval of depositories then, stock exchanges shall develop a separate segment for intra QFI transactions.
- In case the aggregate shareholding of the QFI exceeds the limit of ten percent, the depositories shall jointly notify the respective DPs regarding the breach along with the names of the QFI as a reason of which the limits have been breached and such QFIs shall mandatorily divest excess holdings within three working days of such breach being notified by depositories to the DP.
- Further, SEBI has directed stock exchanges to amend Clause 35 of the Listing Agreement on or before June 30, 2012, so as to disseminate QFI shareholding in equity shares being another class of investor.

Payments and repatriation in case of purchase or sale of shares and dividends and other corporate Actions

- For purchase of Shares, the QFI is to place orders with the DP and shall make foreign inward remittance in pool account maintained by its DP. The DP in turn would place order with the registered stock broker and remit the money. The DP will purchase equity at the instruction of the respective QFIs and if purchase is not made within five working days of inward remittance, (including the date of credit of funds to the single rupee pool bank account) the funds would be

immediately repatriated back to the QFI's designated overseas bank account. DP shall further ensure that bought shares are credited to demat account of QFI on the payout date.

- For sale of Equity shares on instruction of QFI, the DP shall ensure the presence of such shares in its DP account. Further, the sale proceeds of the equity shares will also be received in this single rupee pool bank account of the DP and shall be repatriated to the designated overseas bank account of the QFI within five working days (including the date of credit of funds to the single rupee pool bank account). Also within these five working days, the sale proceeds of the existing investment may also be utilized for fresh purchases of equity shares under this scheme, if so instructed by the QFI.
- In case of credit in pool account of DP by way of dividend or fund out of buy back, delisting or any other corporate action, it can either be directly remitted to the designated overseas bank accounts of the QFIs or credited to the single rupee pool bank account. In case dividend payments are credited to the single rupee pool bank account they shall be remitted to the designated overseas bank accounts of the QFIs within five working days (including the day of credit of such funds to the single rupee pool bank account). Within these five working days, the dividend payments can be also utilized for fresh purchases of equity shares under this scheme, if so instructed by the QFI.